

MF 95-3

Tax Type: MOTOR FUEL TAX

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)		
)	Docket No.
)	IBT No.
v.)	NTL(S) #
)	
XXXXXX)	Richard A. Rohner
(Taxpayer))	Administrative Law Judge
)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXX

SYNOPSIS: This matter comes on for hearing pursuant to the timely protest, by XXXXX, (hereinafter referred to as the "Taxpayer") of Notices of Tax Liability #s XXXXX and XXXXX issued by the Illinois Department of Revenue (hereinafter referred to as the "Department").

At issue is whether the taxpayer is liable for Special Motor Fuel Tax assessed against the taxpayer by the Department for fuel consumed in the use of equipment in off highway miles, idle time and power take-off, which had previously been allowed as refunds by a Department auditor based upon Claims for Credit filed by the taxpayer.

FINDINGS OF FACT: Based upon the exhibits admitted of record, the following findings are made:

1. Under the provisions of 35 ILCS 120/4 and as that section may be incorporated into other taxing acts, the Department's prima facie case, establishing the amounts assessed, including the Correction of Returns reflecting a penalty, were duly admitted into evidence as Department Exhibits 1 and 3 without objection by taxpayer's counsel. In addition,

Motor Fuel Notices of Tax Liability Nos. XXXXX and XXXXX were duly admitted into evidence as Department Exhibits 2 and 4 without objection by taxpayer's counsel. (Dept. Ex. Nos. 1-4)

2. The taxpayer is an interstate motor carrier, providing trucking services for bulk commodities, licensed in all contiguous 48 states and the provinces of Canada. (Tr. pp. 9-10)

3. The taxpayer operates not only its own tractors and trailers, but also utilizes about 700 owner/operators vehicles to perform their hauling of bulk commodities. (Tr. pp. 10-11)

4. The taxpayer operates dump trucks, solely. (Tr. p. 11)

5. The trucks operated by the taxpayer have only one fuel tank thus both the propulsion of the truck and the power required to dump the commodities from the trailer utilize the same fuel tank. (Tr. p. 12)

6. In 1989 the taxpayer filed a claim for credit for the period from August 1987 until August 1989. (Tr. pp. 33-40; Taxpayer Ex. No. 4)

7. The basis of the taxpayer's claim was that 15% of the motor fuel utilized by the taxpayer's vehicles was utilized for other than propelling the vehicles on the public highways. (Tr. p. 36)

8. The taxpayer's claim for off-road mileage or usage of fuel was referred to audit and the Department auditor found such usage to be reasonable. (Tr. p. 36 and Taxpayers Ex. No. 4)

9. Upon review of this audit, in the headquarters of the Department of Revenue in Springfield, the finding by the auditor that the percentage utilized was reasonable was reversed and the audit was returned for revision. (Dept. Ex. No. 5)

10. Based upon that revision the auditor filed a Corrected Return and a Notice of Tax Liability issued. (Dept Ex. Nos. 1 & 3)

11. Taxpayer also filed a claim for refund for the period from October, 1989 through December, 1989 in the amount of \$4,624.00 based upon

the same 15% off road usage calculation. (Tr. pp. 51-52 and Dept. Group Ex. No. 6)

12. Both claims utilized the 15% of total Illinois miles for the off-road usage of fuel. (Tr. pp. 37, 52)

13. In both claims the 15% off-road usage combined idle time, power to dump and off-road usage driving in and out of quarries on private roads. (Tr. p. 51)

14. Both claims were initially paid by the Department and a latter assessment was issued. (Tr. p. 43 and Dept. Ex. Nos. 2 & 4)

CONCLUSIONS OF LAW: 35 ILCS 505/13a imposes a tax upon the use of special fuel upon the highways of this State by commercial vehicles. 35 ILCS 505/13 provides for a refund or reimbursement of motor fuel taxes paid for fuel utilized for any purpose other than operating a motor vehicle upon the public highways or for operating in another state which imposes a tax on the use of such motor fuel. 35 ILCS 505/14 authorizes the Department to make such reasonable rules and regulations relating to the administration and enforcement of the Motor Fuel Tax Act "as may be deemed expedient".

In the case in issue the taxpayer has claimed and been reimbursed for fuel expended in power dumping, idle time and movement on private roads. The Department has promulgated rules to implement the Motor Fuel Tax Act in 86 Admin. Code Ch. I Sec. 500.180 which provide in pertinent part:

"The Department will not approve claims for refund of Motor Fuel Tax where such claims are based upon a showing that part of such motor fuel was used for a taxable purpose, and that the part for which refund is claimed cannot, as a practical matter, be definitely and exactly calculated and itemized, but can only be estimated. Even where such claims are estimated or calculated with such certainty as is possible and practicable, they will be rejected. Only claims which are supported by positive proof of the exact amount of motor fuel not used for a taxable purpose will be approved. (Emphasis supplied)

Although the taxpayer had filed a claim and been reimbursed by the Department, the Department after conducting an audit determined such refund was not owing and issued assessments to recover the tax owed for those

periods because the taxpayer could only estimate the amount of fuel it expended in exempt uses.

It is well settled in Illinois, that when a statute grants an exemption from taxation, the basic rule of construction is that the tax exemption provision is to be construed strictly against the entity asserting the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever there is a doubt, the doubt shall be resolved against exemption and for taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1941). And lastly, the entire burden of establishing the right to an exemption falls upon the one claiming the exemption. *MacMurray College v. Wright*, 38 Ill. 2d 272 (1967)

The taxpayer in this case has been unable to show by positive evidence that the off-road use of motor fuel claimed as exempt was in fact expended on private land in Illinois. Therefore I conclude that the taxpayer has not sustained its burden of proof by a preponderance of the evidence.

Based upon the foregoing Findings of Fact and Conclusions of Law, I recommend that NTL #XXXXXX and NTL #XXXXXX be finalized in their entirety.

Richard A. Rohner
Administrative Law Judge